

Circuit Court for Washington County

Neal Glessner

Plaintiff

v.

Chardan, LLC, et al.

Defendants

Case No. C-21-CV-22-000156

**DEFENDANTS, CHARLOTTE AUFDEM-BRINKE, ALEXANDER THAGGARD,
AND MICHAEL SKINNER'S MOTION FOR PROTECTIVE ORDER
(Hearing Requested)**

Defendants, Charlotte Aufdem-Brinke, Alexander Thaggard, and Michael Skinner ("Defendants"), by and through their counsel, and pursuant to Maryland Rule 2-403, hereby respectfully moves this Honorable Court for a protective order precluding Plaintiff from seeking attendance of Defendants at deposition, until after these Defendants have had a chance to obtain discovery that has already been exchanged in the case and allowed a reasonable time to review such discovery.

INTRODUCTION

Plaintiff, Neal Glessner ("Plaintiff"), has asserted claims of Defamation, Negligence and Unlawful Public Accommodation Discrimination in Violation of Public Policy.

- March 30, 2022: Plaintiff filed his original Complaint against Chardan, LLC.
- May 17, 2022: Plaintiff's First Amended Complaint was filed.
- September 21, 2022: Plaintiff's Second Amended Complaint was filed.
- February 20, 2023: Plaintiff's Third Amended Complaint was filed.
- March 31, 2023: Plaintiff's Fourth Amended Complaint was filed.

- Plaintiff and co-defendant filed a Joint Motion to Vacate the Scheduling Order on April 20, 2023 and as a basis stated as follows:
 5. It is expected that Alex Thaggard, Michael Skinner, and Charlotte Aufdem-Brinke will retain their own counsel, and that they will also expect to engage in the Discovery process.
 6. Additional, a number of depositions have yet to be conducted, including those of Alex Thaggard, Michael Skinner, and Charlotte Aufdem-Brinke. It is not expected that these can be conducted before the close of discovery considering the need for the new parties to be served and obtain counsel.
 7. After conferring with counsel for Plaintiff, all counsel believe it is necessary to vacate the scheduling order and set a new scheduling conference so that the additional parties of Alex Thaggard, Michael Skinner, and Charlotte Aufdem-Brinke, and their counsel, can participate.
- April 25, 2023: The Court issued an Order vacating the scheduling order based on counsel's representations and there are currently no deadlines in place.
- April 29, 2023: Affidavit of Service reflects this date as the date that Alexander Thaggard was served.
- May 12, 2023: Affidavit of Service reflects this date as the date that Michael Skinner was served.
- May 24, 2023: An Answer was filed on behalf of all three Defendants by undersigned counsel.
- May 26, 2023: Two days after these Defendants filed an Answer, Plaintiff requested immediate dates for the depositions of these Defendants. *See Exhibit 1.*
- May 31, 2023: Undersigned counsel contacted Plaintiff's counsel *via* email and indicated that she does not have the necessary information to proceed at this time, namely any information regarding this matter as she only recently filed an Answer. *See Exhibit 2.*
- June 5, 2023: Undersigned counsel sent a follow up email regarding requested information. *See Exhibit 3.*

- June 7, 2023: Plaintiff's counsel sent an email which provided the names of three witnesses that had been deposed previously and indicated that Planet Depos was the court reporter for two of the witnesses and "Jackie Smith" was the court reporter for the other witness. *See Exhibit 4.*
- June 7, 2023: Undersigned counsel contacted Plaintiff's counsel *via* telephone indicating that she was just getting into the case and needed time to review the information that had previously been produced during discovery as this matter has been in litigation for over a year and undersigned counsel was not provided any records, discovery, or depositions. Undersigned counsel explained that she had access to the pleadings on the docket and was doing her best to get through the information as quickly as possible, however, discovery responses, document production and deposition transcripts are not docketed and that prior to her client's being deposed she needed that information. *See Exhibit 5.*
- June 8, 2023: Plaintiff counsel provided a dropbox link to the pleadings that were on the docket but did not provide any records or information that was exchanged in discovery. *See Exhibit 6 (including list of dropbox documents).*
- June 15, 2023: Plaintiff's counsel emailed undersigned counsel indicating that "we need to get these done," referring to the depositions of the Defendants and indicated that he was noting the depositions for July 6, 2023 and July 7, 2023. *See Exhibit 7.*
- June 15, 2023: Undersigned counsel emailed Plaintiff's counsel back indicating that she was not available on July 6, 2023 and July 7, 2023 and that her paralegal would be providing dates shortly. *See Exhibit 8.*
- June 19, 2023: Undersigned counsel propounded Requests for Production of Documents upon Plaintiff.
- June 19, 2023: Undersigned counsel's office provided August 14, 2023 as a date for the deposition of Charlotte Aufdem-Brinke. *See Exhibit 9.*
- June 19, 2023: Despite counsel's entry of appearance only being docketed on May 24, 2023, Plaintiff's counsel responded:

"I appreciate the reply and the date, but that is almost 60 days away, and almost 90 days after I started trying to schedule. We are only required to provide 10 days' notice, and I have been exceedingly

accommodating to try to arrange dates that work for everybody. In good faith, I would like to get all three scheduled to take before Friday, July 14. Please advise what dates between now and July 14 will work.”

See **Exhibit 9**.

- On June 29, 2023, the deposition of Charlotte Aufdem-Brinke was unilaterally noted for July 18, 2023 and depositions of Michael Skinner and Alex Thaggard were unilaterally noted for July 19, 2023. Ms. Aufdem-Brinke’s deposition was noted the day before Plaintiff’s discovery responses were due and the depositions of Michael Skinner and Alex Thaggard are noted on the day that the responses are due. See **Exhibit 10**.
- A hearing to set in a new scheduling order is scheduled for July 14, 2023.

On June 29, 2023, Plaintiff unilaterally noted Defendants’ depositions over defense counsel’s protests in that regard. Given the procedural posture of this matter, Defendants respectfully request a protective order until discovery can be exchanged so that undersigned counsel can properly prepare and defend her clients.

APPLICABLE LAW

Maryland Rule 2-403 allows the court to enter an order that justice requires to protect a person from annoyance, embarrassment, oppression, or undue burden and expense on a motion of a party or of a person from whom discovery is sought for good cause shown. The order may include the following:

- (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred

Maryland Rule 2-403(a). This rule allows the Court to require the plaintiffs to provide discovery responses before taking depositions.

The power of the court to enter a protective order relating to discovery is broad. It includes orders designed to protect a party against abusive litigation tactics. *See Mullaney v. Aude*, 126 Md. App. 639, 659 – 660 (1999). The trial judge's decision on whether to grant a protective order, like other discovery issues, is “vested with a reasonable, sound discretion. . .” *Johnson v. Clark*, 199 Md. App. 305, 323 (2011), *citing Baltimore Transit Co. v. Mezzanotti*, 227 Md. 8, 13 – 14 (1961); *see also Tanis v. Crocker*, 110 Md. App. 559, 573 (1996). A trial court does not abuse its discretion when granting a motion for protective order as long as good cause was shown and the order was issued to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. *Tanis*, 110 Md. App. at 574.

ARGUMENT

I. The Court should require Plaintiff to provide Defendants with a copy of all discovery material exchanged prior to Defendants being added to this case before requiring Defendants to give their depositions in this matter.

Defendants want the Court to require the Plaintiff to provide them with a copy of all discovery materials exchanged before Plaintiff added the Defendants to the case. Defendants do not want to be ambushed during deposition. Defendants are not opposed to having their depositions taken and already provided at least one date. Entering a protective order to this effect will prevent unfairness, enforce the intent of the Maryland Rules, and not cause prejudice to anyone.

In April 2023, the Plaintiff moved to vacate the existing scheduling order. They represented to the Court that they anticipated Defendants Thaggard, Skinner, and Aufdem-Brinke would participate in discovery. *See* Joint Motion to Vacate Scheduling

Order, filed April 20, 2023, ¶ 5-8. That was true. Defendants Thaggard, Skinner, and Aufdem-Brinke wish to participate in discovery. Meaningfully doing that includes reviewing the discovery material exchanged between the parties prior to their entrance into the case.

The other litigants have not provided these Defendants Thaggard, Skinner, and Aufdem-Brinke with the following substantive discovery documents. Chardan, LLC already provided meaningful written discovery responses. Interrogatories and Request for Production of Documents were propounded by Plaintiff upon co-defendant Chardan, LLC on April 2, 2022. Discovery responses were provided to Plaintiff by co-defendant, Chardan, LLC on July 7, 2022. Chardan, LLC's supplemental Responses to Plaintiff's discovery requests were served upon Plaintiff on September 15, 2022. Defendants do not have any of this information.

Plaintiff also provided substantive discovery responses. Interrogatories and Requests for Production of Documents were propounded upon Plaintiff by co-defendant, Chardan, LLC on May 11, 2022. Plaintiff filed a Notice of Service indicating he served upon Chardan, LLC, on March 1, 2023, Plaintiff's Answers to Interrogatories and Responses to Requests for Production of Documents. In addition, on March 1, 2023, Plaintiff filed an Opposition to Chardan's Motion for Sanctions and/or Motion to Compel indicating that he served a "comprehensive document production of approximately 500 pages of requested documents" with his discovery responses. *See Exhibit 11.*

Plaintiff also declined to provide meaningful contact information for a court reporter. Plaintiff provided the identity of the witnesses that were deposed and the court reporters utilized for those depositions as follows:

- a. Daniel Aufdem-Brinke as the Corporate Designee of CharDan, LLC - Jackie Smith,
- b. Hon. Joseph Michael - Planet Depos
- c. Neal Glessner - Planet Depos

See Exhibit 4.

Defendant was able to obtain copies of the transcripts for the Honorable Joseph Michael and Neal Glessner from Planet Depos. Defendants requested contact information for the court reporter, Jackie Smith. Despite contacting numerous court reporting companies, searching the internet and reaching out to other professionals in the field, the contact information for Jackie Smith cannot be located. Defendants are requesting her information so that they can obtain an official transcript of the deposition of Daniel Aufdem-Brinke.¹

The only documents Plaintiff actually provided to these Defendants were a dropbox link containing pleadings that are accessible via the Court's ECF system. *See Exhibit 6.* This does not include discovery responses because discovery responses are not generally filed with the Court. Providing only the pleadings and not the substantial document responses violates the intent of Maryland Rule 2-341(d). That rule required the Plaintiff to serve a copy of all previously filed documents upon any new party. It intends to ensure that any new litigant be brought up to speed by the filing. Requiring

¹ A link to the video of a zoom deposition was provided to these Defendants but the contact information for the court reporter is necessary to order an official transcript.

Plaintiff to serve a copy of all previous served discovery responses accomplishes the intent of that rule.

Defendants need the previously filed discovery responses in order to properly prepare for their depositions. Denying them access to this information will prejudice them by denying them the ability to prepare for the only deposition they will likely give in this case. This violates the intent of the Maryland Rules. Meanwhile, the Plaintiff can produce this information with little effort and without causing any significant delay.

As such, for good cause shown, Defendants, Charlotte Aufdem-Brinke, Alexander Thaggard, and Michael Skinner respectfully request a Protective Order from this Honorable Court precluding Plaintiff from seeking deposition dates from these Defendants prior to the production of discovery responses and documents.

WHEREFORE, Defendants, Charlotte Aufdem-Brinke, Alexander Thaggard, and Michael Skinner, respectfully request that this Honorable Court enter a protective order in their favor.

Respectfully Submitted,

/s/ Lisa M. Morgan

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Attorney for Defendants, Charlotte Aufdem-
Brinke, Alexander Thaggard, and Michael Skinner

REQUEST FOR HEARING

Defendants, Charlotte Aufdem-Brinke, Alexander Thaggard, and Michael Skinner, respectfully request that a hearing be scheduled on their Motion for Protective Order.

Respectfully Submitted,

/s/ Lisa M. Morgan

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Attorney for Defendants, Charlotte Aufdem-
Brinke, Alexander Thaggard, and Michael Skinner

CERTIFICATE OF COMPLIANCE WITH MARYLAND RULE 2-431

I hereby certify that undersigned counsel requested that Plaintiff agree to provide discovery responses and documents prior to the depositions of Charlotte Aufdem-Brinke, Alexander Thaggard, and Michael Skinner, but that Plaintiff refuses to do so and has unilaterally noted their depositions.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

/s/ Lisa M. Morgan

Lisa M. Morgan, Esquire

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2023, I served a copy of this document by e-filing it through MDEC on all parties.

/s/ Lisa M. Morgan

Lisa M. Morgan, Esquire